

ASSEMBLY BILL

No. 580

Introduced by Assembly Member Nunez

February 18, 2003

An act to amend Section 1203.4 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 580, as introduced, Nunez. Firearms.

Existing law provides a procedure for eligible persons to have convictions dismissed, as specified, and be released from all penalties and disabilities resulting from the offense of which they have been convicted, subject to exceptions. Existing law also provides that dismissal pursuant to these provisions does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person.

This bill would provide that dismissal pursuant to these provisions does not permit a person to own, possess, or have in his or her custody or control any firearm.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1203.4 of the Penal Code is amended to
2 read:
3 1203.4. (a) In any case in which a defendant has fulfilled the
4 conditions of probation for the entire period of probation, or has
5 been discharged prior to the termination of the period of probation,

1 or in any other case in which a court, in its discretion and the
2 interests of justice, determines that a defendant should be granted
3 the relief available under this section, the defendant shall, at any
4 time after the termination of the period of probation, if he or she
5 is not then serving a sentence for any offense, on probation for any
6 offense, or charged with the commission of any offense, be
7 permitted by the court to withdraw his or her plea of guilty or plea
8 of nolo contendere and enter a plea of not guilty; or, if he or she
9 has been convicted after a plea of not guilty, the court shall set aside
10 the verdict of guilty; and, in either case, the court shall thereupon
11 dismiss the accusations or information against the defendant and
12 except as noted below, he or she shall thereafter be released from
13 all penalties and disabilities resulting from the offense of which he
14 or she has been convicted, except as provided in Section 13555 of
15 the Vehicle Code. The probationer shall be informed, in his or her
16 probation papers, of this right and privilege and his or her right, if
17 any, to petition for a certificate of rehabilitation and pardon. The
18 probationer may make the application and change of plea in person
19 or by attorney, or by the probation officer authorized in writing.
20 However, in any subsequent prosecution of the defendant for any
21 other offense, the prior conviction may be pleaded and proved and
22 shall have the same effect as if probation had not been granted or
23 the accusation or information dismissed. The order shall state, and
24 the probationer shall be informed, that the order does not relieve
25 him or her of the obligation to disclose the conviction in response
26 to any direct question contained in any questionnaire or
27 application for public office, for licensure by any state or local
28 agency, or for contracting with the California State Lottery.

29 Dismissal of an accusation or information pursuant to this
30 section does not permit a person to own, possess, or have in his or
31 her custody or control any firearm ~~capable of being concealed~~
32 ~~upon the person~~ or prevent his or her conviction under Section
33 12021.

34 This subdivision shall apply to all applications for relief under
35 this section which are filed on or after November 23, 1970.

36 (b) Subdivision (a) of this section does not apply to any
37 misdemeanor that is within the provisions of subdivision (b) of
38 Section 42001 of the Vehicle Code, to any violation of subdivision
39 (c) of Section 286, Section 288, subdivision (c) of Section 288a,
40 Section 288.5, or subdivision (j) of Section 289, any felony

1 conviction pursuant to subdivision (d) of Section 261.5, or to any
2 infraction.

3 (c) A person who petitions for a change of plea or setting aside
4 of a verdict under this section may be required to reimburse the
5 county for the actual cost of services rendered, whether or not the
6 petition is granted and the records are sealed or expunged, at a rate
7 to be determined by the county board of supervisors not to exceed
8 one hundred twenty dollars (\$120), and to reimburse any city for
9 the actual cost of services rendered, whether or not the petition is
10 granted and the records are sealed or expunged, at a rate to be
11 determined by the city council not to exceed one hundred twenty
12 dollars (\$120). Ability to make this reimbursement shall be
13 determined by the court using the standards set forth in paragraph
14 (2) of subdivision (g) of Section 987.8 and shall not be a
15 prerequisite to a person's eligibility under this section. The court
16 may order reimbursement in any case in which the petitioner
17 appears to have the ability to pay, without undue hardship, all or
18 any portion of the cost for services established pursuant to this
19 subdivision.

20 (d) No relief shall be granted under this section unless the
21 prosecuting attorney has been given 15 days' notice of the petition
22 for relief. The probation officer shall notify the prosecuting
23 attorney when a petition is filed, pursuant to this section.

24 It shall be presumed that the prosecuting attorney has received
25 notice if proof of service is filed with the court.

26 (e) If, after receiving notice pursuant to subdivision (d), the
27 prosecuting attorney fails to appear and object to a petition for
28 dismissal, the prosecuting attorney may not move to set aside or
29 otherwise appeal the grant of that petition.

30 (f) Notwithstanding the above provisions or any other
31 provision of law, the Governor shall have the right to pardon a
32 person convicted of a violation of subdivision (c) of Section 286,
33 Section 288, subdivision (c) of Section 288a, Section 288.5, or
34 subdivision (j) of Section 289, if there are extraordinary
35 circumstances.

